Petition

81-1417

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No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1982

FRANK L. THOMAS, PETITIONER

V.

COMMISSIONER ROLAND N. PURNELL, JUDGE ROBERT L. SHAW, JUDGE JEROME H. BERENSON, ATTORNEY HUGH W. HOLBERT, JOHN H. BYRD, JUDGE ROBERT D. CARTER, ATTORNEY GROVER R. HOWE, COURT OF APPEAL SECOND DISTRICT OF CALIFORNIA, SUPREME COURT OF CALIFORNIA, RESPONDENTS

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioner "pro se"

FRANK L. THOMAS, Petitioner
2080 East Hillcrest Drive
Thousand Oaks, California 91362

No Phone

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COMMISSIONER, ROLAND N. PURNELL, JUDGE ROBERT L. SHAW, JUDGE JEROME H. BERENSON, ATTORNEY HUGH W. HOLBERT, JOHN H. BYRD, JUDGE ROBERT D. CARTER, ATTORNEY GROVER R. HOWE, COURT OF APPEAL SECOND DISTRICT OF CALIFORNIA, SUPREME COURT OF CALIFORNIA RESPONDENTS

Petition for a Writ of Certiorari to The United States Court of Appeals for the Ninth Circuit

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Petitioner requests that a Writ of Certiorari issue to review the MEMORANDUM of the United States Court of Appeals for the Ninth Circuit in this Case No. 80-5805.

CITATIONS TO OPINIONS

(Not Reported)

1. The Memorandum of the Court of Appeals is set forth in Appendix "B" of the Petition.

2. The Notice of Entry of Judgment dismissing the Petition of the United States District Court is set forth in Appendix "A" of the Petition.

JURISDICTION

1. The Court of Appeals entered the Memorandum on October 13, 1981 (App. "B", P. 21)

STATUTES INVOLVED

Jurisdiction was gained over the subject matter in the Federal District Court under 28 U. S. Code section 1343, paragraphs 1, 2, 3 and 4, 42 U. S. C. 1983, 1985 paragraphs 2 and 3 and 1986 sections. Also the First, Fifth and Fourteenth Amendments of the Constitution of the U. S.

The Fifth Amendment to the U. S. Constitution provides in pertinent part :

> ...No person shall...be deprived of life, liberty, or

property without due process of law.

The First Amendment to the Constitution of the U. S. protects the reputation of the person.

STATEMENT OF FACT FOR QUESTION NO. 1

FRANK L. THOMAS Petitioner filed an action against PURNELL, SHAW, BERENSON, HOLBERT, BYRD, CARTER, HOWE, COURT OF APPEAL SECOND DISTRICT OF CALIFORNIA AND SUPREME COURT OF CALIFORNIA, in the Federal District Court CV No. 80-2853 upon appeal became No. 80-5805. The CAUSE OF ACTION WAS CONSPIRACY, FRAUD, and DENIAL OF EQUAL PROTECTION OF THE LAWS. The Complaint was filed July 1, 1980. The Complaint was dismissed and Notice of Entry of Judgment on the docket September 23, 1980. The Appeal Court dismissed the action and it was filed October 13, 1981.

ORR, TEMPLEMAN and FINCK were in the Municipal Court with JUDGE SOARES, when ORR and TEMPLEMAN coached FINCK in giving the Speaking Motion, October 5, 1976. In the action against ORR and TEMPLEMAN in the Superior Court, it was

declared by PURNELL the acting judge, that FRANK L. THOMAS is a vexatious litigant, and was ordered to put up money for the defense of the defendants, or otherwise the action could be dropped.

DISCUSSION

Is this proof with only about five lines or 38 words I would not prevail? This is what was given that I could not prevail in the litigation.

> "The plaintiff's Complaint is unintelligible and does not state a cause of action. It is well settled that a litigant does not have any cause of action against the opposing attorney other than malicious prosecution or abusive process."

In order to force the accused vexatious litigant to put up money for the defense of the defendants, he must be declared a vexatious litigant by having lost so many cases in a period of time and the second as given, he does not have a reasonable probability of prevailing. As stated TEMPLEMAN, who brought the first Motion to compel security to be put up by this

plaintiff, used only the 38 words given. His whole Motion was composed of nine pages. Most of the nine pages was to show how I am a vexatious litigant in having lost cases. So using only about five lines of those nine pages, it is declared I am a vexatious litigant. In criminal trials, a person is presumed innocent until prooved guilty. Here, just those five lines were given to proove I could not prevail in the litigation, in which TEMPLEMAN along with ORR and FINCK conspired to give the Speaking Motion, which is not legal, with California Code of Civil Procedure section 437c.

Section 437c requires that the Motion must be written, served on the opposition, meaning myself 10 days in advance of the hearing, as well as the use of affidavits. None of these things were done in the Court of JUDGE SOARES October 5, 1976 and later approved by PURNELL. It is injurious to my reputation, which is supposed to be protected by the First Amendment of the Constitution of the United States.

It is natural for the opposition to say

the Complaint is unintelligible hoping he can demurr it out of court, or strike it. And why is there no cause of action, when they schemed against me to withdraw the Answer, and take a Default, without following section 437c? It is a frameup by the attorneys and judges, the latter who have sworn to protect the Constitution of the United States. They are traitors and cowards. They do not give impartial decisions, but show favors to some over others. My argument was that no proof was shown. Show proof.

CONCLUSION

Due process was not followed in the granting the Motion that security be posted, as no proof was given that FRANK L. THOMAS could not prevail. They have to furnish proof. It was not furnished.

STATEMENT OF FACT FOR QUESTIONS NO. 2

ATTORNEY FINCK was the person making the Motion for Summary Judgment on October 5, 1976, in the Court of JUDGE SOARES. PURNELL sustain his demurrer.

DISCUSSION

FINCK made the Motion for Summary Judgment which was not legal in the State of California.

CONCLUSION

Due process was not followed by PURNELL in sustaining the demurrer brought by FINCK, when he was shown that the Motion was not legal.

STATEMENT OF FACT FOR QUESTION NO. 3

In the BYRD trial, HOLBERT counsel for BYRD offered into evidence a false document, while BYRD his client sat beside him.

DISCUSSION

PURNELL sustained the demurrer, although this plaintiff showed him where the false document was offered by HOLBERT with BYRD in attendance and knew what was being offered. After I made a strong protest, JUDGE HEATON stated the false document would be admitted into evidence, and that the jury should disregard my words about the falsity of the document. My Motion for a new trial was acted upon without my presence, and without notifying me.

CONCLUSION

Due process was not followed when the de-

murrers were sustained, when irregularities were committed, which should have been basis for a new trial, which were denied, without my presence.

STATEMENT OF FACT FOR QUESTION NO. 4

ATTORNEY HOWE, counsel for a client ODDO, filed papers for a hearing December 26, but did not notify me of the hearing.

DISCUSSION

The Bible states an accused should be given a hearing, before being condemned. I did not get the hearing, nor was any notification given me of the hearing. California Code of Civil Procedure section 2034a states there must be a hearing. If after that the party fails to comply, sanctions may be awarded, but only after the hearing.

CONCLUSION

Due process was not followed when the demurrer was sustained after the illegal hearing of December 26, without my presence.

STATEMENT OF FACT FOR QUESTION NO. 5

HOWE, in his Motion for December 26, in

which he did not invite me, used the Federal Statute instead of the State Statute.

DISCUSSION

PURNELL erred when he sustained the demurrer, in which the Federal Statute was used, instead of the California Code of Civil Procedure section 2034a.

CONCLUSION

Due process was not followed when the Federal Statute was used in a State Court, when the State Statute was to be used.

STATEMENT OF FACT FOR QUESTION NO. 6

PURNELL sustained a demurrer for HOWE, when HOWE did not give the 10 days notice, required by law at that time.

DISCUSSION

The law at that time was that 10 days should be allowed for a Motion which gives the opposition time to reply. It was pointed out to PURNELL how there was not the 10 days. But he sustained the demurrer, after asking HOWE if there were 10 days, but there was not the 10 days.

CONCLUSION

PURNELL did not follow due process in sustaining the demurrer brought by HOWE, when the time to reply to that Motion was less than 10 days.

STATEMENT OF FACT FOR QUESTION NO. 7

HOWE was the counsel for ODDO his client. ODDO had trespassed on my property to my injury. I have proof there was a trespass.

DISCUSSION

It was stated I had to post security by being classed as a vexatious litigant. HOWE, like others who brought vexatious litigant actions just copied the Motion made by TEMPLEMAN. HOWE never even bothered to change the applicable names, but he was granted his Motion that I have to furnish security. The case was at issue, and it was ready for trial, when it was delayed without my permission, by the judge and ODDO himself. HOWE for ODDO had the obligation of prooving that I could not prevail. This in the fact of a trespass, but PURNELL decided for ODDO.

CONCLUSION

Due process was not followed when security was to be posted in the ODDO Case, when there was a trespass, which was a reasonable probability I could prevail. ODDO did not prove I could not prevail, which was necessary and as I stated proof was not shown. It was a prejudiced court.

STATEMENT OF FACT FOR QUESTION NO. 8

ATTORNEY JOYCE was brought into court because he failed to send an Order to me, which was ordered done by JUDGE STONE. NADASI his partner also was ordered to send a document in a hearing, but NADASI failed to comply.

DISCUSSION

JOYCE never formulated a copy of the Order, nor was it in the files until it mysteriously got into the file many months later. NADASI failed to send an Order, when told to do so, by JUDGE CHILDERS, in order to allow the rights of plaintiff FRANK L. THOMAS t[illegible] act. These acts of JOYCE and NADASI were against the law, but PURNELL stated security had to be posted which

was for those two law breakers. Any of those acts done by me would have thrown the case out of court.

CONCLUSION

No security should have been required by the two law breakers, who did not follow the law, but have conspired with the judges and attorneys to bring the actions for security. Due process was not followed.

STATEMENT OF FACT FOR QUESTION NO. 9

BYRD through his attorney filed a Motion that FRANK L. THOMAS be required to furnish security. BYRD is another one who trespassed on my property, piling earth and other materials seven feet high and five feet over the property line and on my driveway. It was the client BYRD who sat beside HOLBERT his attorney and watched while HOLBERT offered into evidence the faulty document, which was admitted into evidence over my strenuous objections.

DISCUSSION

BYRD had to show why the document was not legal, but it was shown by this party that it

was faulty. BYRD heard my strong protests about the admitting of the false document, but he sat quietly, and did not mention it to his attorney.

CONCLUSION

Due process was not followed by CARTER, when he stated security had to be posted, when the faulty document was shown it was grounds for an issue in a court of law.

STATEMENT OF FACT FOR QUESTION NO. 10

JUDGE BERENSON sustained the demurrer brought by HOWE, when the illegal hearing of December 26 was shown to him.

DISCUSSION

The hearing December 26 was without my presence, which is necessary before the sanctions and furnishing of documents may be imposed.

CONCLUSION

Due process was not followed by BERENSON, when shown the illegality of the hearing December 26 and he sustained the demurrer.

STATEMENT OF FACT FOR QUESTION NO. 11

JUDGE BERENSON sustained the demurrer brought by HOWE, when the fact HOWE had used the Federal Statute, instead of the State Statute and this was shown to him.

DISCUSSION

State Statutes are to be used in the State Courts, and not the Federal Statutes. The Federal Statute states a hearing is necessary, which was defied, and I was not invited to the hearing.

CONCLUSION

Due process was not followed by BERENSON when shown the illegality of using the Federal Statute instead of the State Statute.

STATEMENT OF FACT FOR QUESTION NO. 12

JUDGE BERENSON sustained the demurrer brought by HOWE, when the fact HOWE had not given the full 10 days to act and prepare, which was necessary time by law.

DISCUSSION

The 10 day limit was not followed, and defied by BERENSON, when he sustained the demurrer of HOWE. He knew it was 10 days by law.

This was pointed out to him in the documents. Others tried to get secuirty posted, but were denied when they failed to give the 10 days as required.

CONCLUSION

Due process was not followed, when the full 10 days were not allowed for a reply and preparation to reply to the demurrer.

STATEMENT OF FACT FOR QUESTION NO. 13

JUDGE SHAW was the judge deciding if a new trial should be given, when the Speaking Motion for Summary Judgment was not legal in California. A Writ of Prohibition was asked to prevent the Speaking Motion effects. This was for the hearing October 5, 1976 in the court of JUDGE SOARES in which it is claimed TEMPLEMAN, ORR and FINCK participated in the giving of a Motion that was not legal, namely California Code of Civil Procedure section 437c.

DISCUSSION

The Speaking Motion for Summary Judgment is not legal in California but the Speaking Motion was approved by JUDGE SHAW.

CONCLUSION

JUDGE SHAW in the Writ of Prohibition approved of the Speaking Motion which was not legal with section 437c. Due process of law was not followed.

STATEMENT OF FACT FOR QUESTION NO. 14

HOLBERT was the counsel for BYRD and appeared in the Motion I made for a new trial, December 11, 1978. HOLBERT brought a document to the hearing he made a day before the hearing, and filed this after the hearing, in which I was not present. No notice was ever given of this hearing or results by either the Court or HOLBERT.

DISCUSSION

It was stated in the Minutes of the Meeting, that they looked inside and outside the courtroom, but FRANK L. THOMAS was not around. He was not invited. He did not know of the meeting.

CONCLUSION

HOLBERT as an officier of the State Bar failed to notify of the results of the hearing.

It was a secret meeting, in which I managed to learn of the action and its results. Due process was not followed, when they failed to notify me of the hearing, or let me speak my part.

STATEMENT OF FACT FOR QUESTION NO. 15

BYRD should have known of the acts of his counsel HOLBERT.

DISCUSSION

It was a secret meeting, in which the plaintiff and requestor of the new trial was not invited. BYRD should take the benefits with the burdens. BYRD took the benefits of the false document, when he could have stopped its use in court.

CONCLUSION

Due process was not followed in the denial of the new trial, when the meeting was a secret meeting. FRANK L. THOMAS did not learn of the results in time to file an Appeal in the State of California. The opposition are required by law to give information of all acts to those of record with the court.

STATEMENT OF FACT FOR QUESTION NO. 16

HOWE was the attorney who filed the Motion for the hearing December 26, but failed to notify FRANK L. THOMAS of the hearing.

DISCUSSION

Without being notified, I could not appear but the sanctions and furnishing of documents need not be furnished, until there is a hearing and after that failure in complying. It was a secret meeting.

CONCLUSION

Due process was not followed by HOWE, when he failed to notify of the hearing December 26.

STATEMENT OF FACT FOR QUESTION NO. 17

PURNELL sustained the demurrer brought by HOWE.

DISCUSSION

BERENSON sustained the first three causes of action and no reply was made to the Fourth Cause of Action by HOWE, but PURNELL was able to sustain something HOWE never replied to. So PURNELL only had to sustain the Fourth Cause of Action, but there was no reply to sustain.

CONCLUSION

DUE PROCESS was not followed when PURNELL sustained the demurrer of HOWE, when HOWE, who filed the demurrer, must answer and reply. HOWE did not reply. Thus the lack of due process.

STATEMENT OF FACT FOR QUESTION NO. 18

The Appeal Court of California was notified that a hearing was held without the presence of the party who requested it, namely a Motion for a New Trial by this Petitioner.

DISCUSSION

Without my presence, the Appeal Court was able to deny the Writ of Review. It is the lack of that day in court we should have.

CONCLUSION

There was a lack of due process when the Writ of Review was denied. The judges and attorneys flaunted the law, and the reviewer failed to do anything about it. So recourse was taken to the Supreme Court of California.

STATEMENT OF FACT FOR QUESTION NO. 19

The Supreme Court was notified of the failure of the notifying of THOMAS of the hear-

ing on March 20, 1979.

DISCUSSION

The Supreme Court of California was notified of the lack of the presence of FRANK L. THOMAS at the hearing in which he requested it but was not notified of the date set for that hearing by the court.

CONCLUSION

No day in court was given by the Supreme Court of California, when it was denied me the right to be present in the Superior Court, as it was also denied by the Appeal Court, and finally by the Supreme Court of California. Due process was not followed, as I was not invited to the secret meeting.

PRAYER

WHEREFORE, The court should stop these abuses of hearings and grant the Petition for the issuance of the Writ of Certiorari.

Respectfully submitted, January 2, 1982

Frank F Thomas

FRANK L. THOMAS
2080 East Hillcrest Drive
Thousand Oaks, California 91362 No Phone

APPENDIX

Exhibit	Description	Page
"A"	NOTICE OF ENTRY DISMISSING COMPLAINT IN THE UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA	1
"B"	MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT	2

APPENDIX "A"

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FRANK L. THOMAS PLAINTIFF (S) vs COMMISSIONER ROLAND N. PURNELL, et al DEFENDANT (S)	CASE NUMBER CV 80-2853-MML (JR) NOTICE OF ENTRY

TO THE ABOVE NAMED PARTIES AND TO THEIR ATTORNEY (S) OF RECORD:

You are hereby notified that JUDGMENT in the above entitled case was entered in the docket on Sep 23 1980.

You are also notified that if this case was tried and you introduced exhibits into evidence, they must be claimed at this office after the expiration of thirty days from the receipt of this notice. (After sixty days in cases in which the United States, its officers or agencies were parties). Unless they are

APPENDIX "A" - continued

claimed within thirty days after the expiration of the above period, they will be destroyed pursuant to Local Rule 20 (a). If an appeal is taken they will, of course, be held until the Appellate Court finally determines the matter. Exhibits which are attached to a pleading will not be destroyed but will remain as a permanent record in the case file.

APPENDIX "B"

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANK L. THOMAS Plaintiff-Appellant v. COMMISSIONER ROLAND N. PURNELL, JUDGE ROBERT L. SHAW, JUDGE JEROME H. BERENSON, ATTORNEY HUGH W. HOLBERT, JOHN H. BYRD, JUDGE ROBERT D. CARTER, ATTORNEY GROVER R. HOWE, COURT OF APPEAL, SECOND DISTRICT OF CALIFORNIA, SUPREME COURT OF CALIFORNIA Defendants-Appellees	FILED OCT 13 1981 CLERK, U. S. COURT OF APPEALS No. 80-5805 D. C. NO. C-80-2853 MML MEMORANDUM

Appeal from the United States District Court for the Central District of California

Argued & Submitted on October 6, 1981
Malcolm M. Lucas, District Judge Presiding
Before: SNEED, KENNEDY and SKOPIL, Circuit Judges.

Appellant brought this action pro se under 42 U.S.C. sections 1983, 1985, and 1986 against various state judges, courts, attorneys, and a lay person. The district court dismissed the

APPENDIX "B" - continued

complaint. We affirm.

Appellant's claims against state judges are barred by the doctrine of judicial immunity. His claims against the lay person do not state a cause of action because of the failure to allege that state action exits. Appellant's claims againt the State Courts are barred either by the 11th Amendment or by reason of his failure to allege that the courts took unconstituional action pursuant to government policy or custom.

AFFIRMED.

AFFIDAVIT OF SERVICE

(Certificate of Service)

I certify that this date I have caused to be served 3 copies of the PETITION FOR WRIT OF CERTIORARI on VENTURA COUNTY COUNSEL, MARY C. WARD ASSISTANT COUNTY COUNSEL, 800 South Victoria Avenue, Ventura, California 93009, on ATTORNEY HIGH W. HOLBERT, 171 E. Thousand Oaks Blvd., Thousand Oaks, California 91360, on JOHN H. BYRD, 1429 E. Thousand Oaks Blvd., Thousand Oaks, California 91360, on HONORABLE ROBERT D. CARTER, SAN DIEGO COUNTY SUPERIOR COURT, 220 West Broadway, San Diego, California 92101, on ATTORNEY GROVER HOWE, 2500 Vineyard Ave., Suite 240, Oxnard, California 93030, on LAURA LEE GOLD, Deputy Attorney General, 3580 Wilshire Blvd., Rm. 800, Los Angeles, California 90010, on ROBERT BARROW, DEPUTY CLERK, 3580 Wilshire Blvd., Room 213, Los Angeles, California 90010 by U. S. Postal Service, postage prepaid, from Thousand Oaks, California.

_____

FRANK L. THOMAS

AFFIDAVIT OF SERVICE - continued

Subscribed and affirmed before
me this _____day of
January 1982.

_____

Notary Public

My Commission Expires on_____